

**EIGHTH DAY - AUGUST 8, 2002**  
**LEGISLATIVE JOURNAL**  
**NINETY-SEVENTH LEGISLATURE**  
**SECOND SPECIAL SESSION**

**EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, August 8, 2002

**PRAYER**

The prayer was offered by Senator Dw. Pedersen.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Heineman presiding.

The roll was called and all members were present except Senators Brashear, Bromm, Dierks, Engel, Landis, Preister, and Price who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the seventh day was approved.

**SELECT FILE**

**LEGISLATIVE BILL 12.** E & R amendment, AM7233, found on page 87, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 4.** Advanced to E & R for engrossment.

**LEGISLATIVE BILL 5.** E & R amendment, AM7234, found on page 88, was adopted.

Advanced to E & R for engrossment.

**GENERAL FILE**

**LEGISLATIVE BILL 17.** Title read. Considered.

Senator Thompson renewed her pending amendment, AM9040, found on page 90.

The Thompson amendment was adopted with 28 ayes, 0 nays, 14 present and not voting, and 7 excused and not voting.

Senator Dierks moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 1 nay, and 22 not voting.

Senator Thompson moved for a call of the house. The motion prevailed with 40 ayes, 0 nays, and 9 not voting.

Senator Chambers requested a record vote on the advancement of the bill.

Voting in the affirmative, 21:

Aguilar	Coordsen	Maxwell	Redfield	Vrtiska
Baker	Hartnett	McDonald	Robak	
Brown	Janssen	Pedersen, Dw.	Suttle	
Byars	Johnson	Quandahl	Synowiecki	
Chambers	Kruse	Raikes	Thompson	

Voting in the negative, 25:

Beutler	Connealy	Erdman	Kremer	Schrock
Bourne	Cudaback	Foley	Pederson, D.	Smith
Bromm	Cunningham	Hlava	Preister	Stuhr
Bruning	Dierks	Hudkins	Price	Tyson
Burling	Engel	Jones	Schimek	Wehrbein

Present and not voting, 1:

Jensen

Excused and not voting, 2:

Brashear      Landis

Failed to advance to E & R for review with 21 ayes, 25 nays, 1 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

## **ATTORNEY GENERAL'S OPINION**

### Opinion #02020

DATE:                      August 8, 2002

SUBJECT: Scope of the Call for Special Session and Resolution for Constitutional Amendment regarding Casino Gambling

REQUESTED BY: Senator Philip Erdman, Legislative District 47

WRITTEN BY: Don Stenberg, Attorney General  
Mark D. Starr, Assistant Attorney General

QUESTION: Is LR 2CA within the scope of the Governor's Call for a Special Session?

CONCLUSION: No.

By proclamation dated July 24, 2002, the Governor called for a special session to commence on July 30, 2002. The Call identified 26 matters to be dealt with at the special session. Generally, the topics include the reduction or elimination of appropriations, making specified fund transfers, adopting modifications in payment requirements, and making miscellaneous changes in certain programs.

During this special session, Legislative Resolution 2CA was introduced. The resolution proposed that an amendment to Article III, section 24, of the Nebraska Constitution be submitted to the electors at the November 2002 general election. The amendment would authorize casinos in interdiction gaming zones and remove state restrictions against gaming on Indian reservations and Indian trust lands.

The topics to be addressed pursuant to the Call are specific and we find nothing in the Call related to gambling or interdiction gaming zones.

Article IV, Section 8 of the Nebraska Constitution provides: "The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together." This provision gives the Governor the power to set the boundaries of legislative action permissible at a special session of the Nebraska Legislature. *Jaksha v. State*, 222 Neb. 690, 698, 385 N.W.2d 922, 927 (1986). The proclamation may state the purpose for which the Legislature is convened in broad, general terms or it may limit the consideration to a specified phase of a general subject. *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 689, 131 N.W.2d 134, 137 (1964).

On its face, the constitutional provision precludes the Legislature from addressing any business beyond that specified in the Call. We take this to include Legislative Resolutions such as the one at issue here. See Op. Att'y Gen. No. 92114 (Sept. 14, 1992) (LR 2 proposing amendment to the Constitution deemed not germane to the items on the Governor's Call), and

State ex rel. Douglas v. State Bd. of Equalization and Assessment, 205 Neb. 130, 140-145, 286 N.W.2d 729, 734-37 (Brodkey, J., concurring).

Responding to a Call for a special session, the Legislature may enact legislation relating to, germane to, and having a natural connection with the purpose for which it was convened; it is free to determine in what manner the purpose shall be accomplished, but it must confine itself to the matters submitted to it by the proclamation. Arrow Club, 177 Neb. at 689-90, 131 N.W.2d at 137.

Where the Governor has been specific in his Call, the Legislature will be afforded little room to roam. See Op. Att'y Gen. No. 01034 (Oct. 31, 2001). For example, in Arrow Club it was held that the Legislature had strayed too far afield when it legislated on the topic of bottle clubs after the Governor had called the members together to consider amendments to the Liquor Control Act relating to the licensing of nonprofit corporations. It was not enough that the enactment also involved the Liquor Control Act. The court did not believe that legislating on the topic of bottle clubs was sufficiently linked to the topic of licensing of nonprofit corporations.

Here, it is difficult to see any connection between the legislative proposal and the topics on the Call. It is our conclusion that LR 2CA is outside the Call's scope.

Sincerely,  
DON STENBERG  
Attorney General  
(Signed) Mark D. Starr  
Assistant Attorney General

26-171-21

### **STANDING COMMITTEE REPORT**

#### **Natural Resources**

The Natural Resources Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Nebraska Environmental Trust Board  
Robert F. Krohn

Nebraska Ethanol Board  
Mark McColley

VOTE: Aye: Senators Bruning, Hlava, Hudkins, Kremer, Preister, Schrock, and Stuhr. Nay: None. Absent: Senator Jones.

(Signed) Ed Schrock, Chairperson

**GENERAL FILE**

**LEGISLATIVE BILL 46.** Title read. Considered.

The Standing Committee amendment, AM9036, found on page 74, was adopted with 34 ayes, 0 nays, 13 present and not voting, and 2 excused and not voting.

Senator Bromm asked unanimous consent to be excused until he returns. No objections. So ordered.

Advanced to E & R for review with 40 ayes, 0 nays, 6 present and not voting, and 3 excused and not voting.

**STANDING COMMITTEE REPORTS****Appropriations**

**LEGISLATIVE BILL 37.** Placed on General File.

**LEGISLATIVE BILL 1.** Placed on General File as amended.

(Standing Committee amendment, AM9052, is printed separately and available in the Bill Room - Room 1102.)

**LEGISLATIVE BILL 2.** Placed on General File as amended.

(Standing Committee amendment, AM9047, is printed separately and available in the Bill Room - Room 1102.)

(Signed) Roger R. Wehrbein, Chairperson

**GENERAL FILE**

**LEGISLATIVE BILL 32.** Title read. Considered.

The Standing Committee amendment, AM9035, found on page 71, was considered.

**SPEAKER BROMM PRESIDING**

Senator Tyson offered the following amendment to the Standing Committee amendment:

(Amendment, AM9042, is on file and available in the Clerk's Office - Room 2014.)

Senator Tyson withdrew his amendment.

Senators McDonald, Aguilar, and Bruning asked unanimous consent to be excused until they return. No objections. So ordered.

The Standing Committee amendment was adopted with 32 ayes, 0 nays, 12 present and not voting, and 5 excused and not voting.

Advanced to E & R for review with 35 ayes, 2 nays, 8 present and not voting, and 4 excused and not voting.

### **VISITORS**

Visitors to the Chamber were Mikaela and Quiller Caudill from Lincoln.

### **RECESS**

At 11:25 a.m., on a motion by Senator Cunningham, the Legislature recessed until 1:30 p.m.

### **AFTER RECESS**

The Legislature reconvened at 1:30 p.m., Senator Cudaback presiding.

### **ROLL CALL**

The roll was called and all members were present except Senators Landis and Quandahl who were excused.

### **GENERAL FILE**

**LEGISLATIVE BILL 1.** Title read. Considered.

The Standing Committee amendment, AM9052, printed separately and referred to on page 103, was considered.

Senator Dierks asked unanimous consent to be excused until he returns. No objections. So ordered.

Senator Coordsen requested a division of the question on the Standing Committee amendment.

The Chair sustained the division of the question.

The first Standing Committee amendment is as follows:

FA1118

25 Sec. 9. Section 86-1405, Revised Statutes Supplement,  
26 2001, as amended by Laws 2002, LB 1105, section 202, and Laws 2002,  
27 LB 1211, section 13, is amended to read:

- 1 ~~86-1405.~~ (1) The Nebraska Telecommunications Universal
- 2 Service Fund is hereby created. The fund shall provide the
- 3 assistance necessary to make universal access to telecommunications
- 4 services available to all persons in the state consistent with the
- 5 policies set forth in the Nebraska Telecommunications Universal

6 Service Fund Act. Only eligible telecommunications companies  
7 designated by the commission shall be eligible to receive support  
8 to serve high-cost areas from the fund. A telecommunications  
9 company that receives such support shall use that support only for  
10 the provision, maintenance, and upgrading of facilities and  
11 services for which the support is intended. Any such support  
12 should be explicit and sufficient to achieve the purpose of the  
13 act.

14 (2) Notwithstanding the provisions of section 25 of this  
15 act, in addition to other provisions of the act, and to the extent  
16 not prohibited by federal law, the commission:

17 (a) Shall have authority and power to subject eligible  
18 telecommunications companies to service quality, customer service,  
19 and billing regulations. Such regulations shall apply only to the  
20 extent of any telecommunications services or offerings made by an  
21 eligible telecommunications company which are eligible for support  
22 by the fund. The commission shall be reimbursed from the fund for  
23 all costs related to drafting, implementing, and enforcing the  
24 regulations and any other services provided on behalf of customers  
25 pursuant to this subdivision;

26 (b) Shall have authority and power to issue orders  
27 carrying out its responsibilities and to review the compliance of  
1 any eligible telecommunications company receiving support for  
2 continued compliance with any such orders or regulations adopted  
3 pursuant to the act;

4 (c) May withhold all or a portion of the funds to be  
5 distributed from any telecommunications company failing to continue  
6 compliance with the commission's orders or regulations;

7 (d) Shall require every telecommunications company to  
8 contribute to any universal service mechanism established by the  
9 commission pursuant to state law. The commission shall require, as  
10 reasonably necessary, an annual audit of any telecommunications  
11 company to be performed by a third-party certified public  
12 accountant to insure the billing, collection, and remittance of a  
13 surcharge for universal service. The costs of any audit required  
14 pursuant to this subdivision shall be paid by the  
15 telecommunications company being audited;

16 (e) Shall require an audit of information provided by a  
17 telecommunications company to be performed by a third-party  
18 certified public accountant for purposes of calculating universal  
19 service fund payments to such telecommunications company. The  
20 costs of any audit required pursuant to this subdivision shall be  
21 paid by the telecommunications company being audited; and

22 (f) May administratively fine pursuant to section 75-156  
23 any person who violates the Nebraska Telecommunications Universal  
24 Service Fund Act.

25 (3) Any money in the fund available for investment shall  
26 be invested by the state investment officer pursuant to the  
27 Nebraska Capital Expansion Act and the Nebraska State Funds

1 Investment Act.

2 (4) Within five days after the effective date of this

3 act, the State Treasurer shall transfer ten million dollars from

4 the Nebraska Telecommunications Universal Service Fund to the

5 General Fund.

Senators D. Pederson and Wehrbein asked unanimous consent to be excused until they return. No objections. So ordered.

Senator Tyson moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 4 nays, and 20 not voting.

Senator Foley moved for a call of the house. The motion prevailed with 30 ayes, 0 nays, and 19 not voting.

Senator Thompson requested a roll call vote, in reverse order, on the first Standing Committee amendment.

Voting in the affirmative, 19:

Beutler	Foley	Maxwell	Robak	Thompson
Bourne	Hartnett	McDonald	Schimek	Vrtiska
Cudaback	Janssen	Preister	Suttle	Wehrbein
Engel	Kruse	Price	Synowiecki	

Voting in the negative, 27:

Aguilar	Burling	Dierks	Jones	Smith
Baker	Byars	Erdman	Kremer	Stuhr
Brashear	Chambers	Hlava	Pedersen, Dw.	Tyson
Bromm	Connealy	Hudkins	Raikes	
Brown	Coordsen	Jensen	Redfield	
Bruning	Cunningham	Johnson	Schrock	

Excused and not voting, 3:

Landis	Pederson, D.	Quandahl
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The first Standing Committee amendment lost with 19 ayes, 27 nays, and 3 excused and not voting.

The Chair declared the call raised.

Pending.

Senator Dw. Pedersen asked unanimous consent to be excused. No objections. So ordered.



Senator Aguilar asked unanimous consent to be excused until he returns. No objections. So ordered.

## SELECT COMMITTEE REPORTS

### Enrollment and Review

#### Correctly Engrossed

The following bills were correctly engrossed: LBs 4, 5, and 12.

(Signed) Philip Erdman, Chairperson

#### GENERAL FILE

**LEGISLATIVE BILL 1.** The second Standing Committee amendment is as follows:

FA1119

1 1. Insert the following new sections:

18 Sec. 3. Section 66-1345.04, Revised Statutes Supplement,  
19 2001, is amended to read:

20 66-1345.04. (1) The State Treasurer shall transfer from  
21 the General Fund to the Ethanol Production Incentive Cash Fund, on  
22 or before the end of each of fiscal years 1995-96 and 1996-97,  
23 \$8,000,000 per fiscal year.

24 (2) It is the intent of the Legislature that the  
25 following General Fund amounts be appropriated to the Ethanol  
26 Production Incentive Cash Fund in each of the following years:

27 (a) For each of fiscal years 1997-98 and 1998-99,

1 \$7,000,000 per fiscal year;

2 (b) For fiscal year 1999-2000, \$6,000,000;

3 (c) For fiscal year 2000-01, \$5,000,000; and

4 (d) For ~~each of fiscal years~~ fiscal year 2001-02 and for

5 each of fiscal years 2003-04 through 2007-08, \$1,500,000.

6 Sec. 4. Section 79-810, Revised Statutes Supplement,  
7 2000, is amended to read:

8 79-810. (1) The certificates and permits provided for in

9 section 79-808 shall be issued by the commissioner upon application  
10 on forms to be prescribed and provided by him or her, which shall

11 include the applicant's social security number, and upon the  
12 payment by the applicant of a nonrefundable fee of forty-five  
13 dollars, except as provided in subsection ~~(4)~~ (5) of this section,  
14 for each application for a certificate or permit. The board may  
15 waive the fee for the holder of any certificate issued in another  
16 state which is determined to have validity in this state based on  
17 provisions in agreements between the states which have been  
18 approved by the board.

19 (2) Each such certificate or permit issued by the  
20 commissioner shall indicate the grade levels, subjects, subject  
21 fields, or areas of specialization for which the holder was

22 specifically prepared by a standard institution of higher education  
23 or authorized by the board to teach, counsel, supervise, and  
24 administer. During the term of any certificate or permit issued by  
25 the commissioner, additional endorsements may be made on the  
26 certificate or permit for a nonrefundable fee of thirty dollars.

27 Such additional endorsements shall indicate only the grade levels,  
1 subjects, subject fields, or areas of specialization for which the  
2 holder was specifically prepared by a standard institution of  
3 higher education or authorized by the board pursuant to section  
4 79-808.

5 (3) The Teachers' Certification Fund is created. Any fee  
6 received by the State Department of Education under this section  
7 shall be remitted to the State Treasurer for credit to the  
8 Teachers' Certification Fund. The fund shall be used by the  
9 department in paying the costs of certifying educators pursuant to  
10 sections 79-808 to 79-816, except that fifteen dollars of the  
11 forty-five-dollar fee specified in subsection (1) of this section  
12 shall be credited to the Professional Practices Commission Fund  
13 which is created for use by the department to pay for the  
14 provisions of sections 79-859 to 79-871. Transfers from the  
15 Professional Practices Commission Fund to the General Fund may be  
16 made at the direction of the Legislature. Money in the Teachers'  
17 Certification Fund shall not be used for any purpose other than the  
18 direct certification of educators and shall not be used for  
19 accreditation visits. Any money in the Teachers' Certification  
20 Fund or the Professional Practices Commission Fund available for  
21 investment shall be invested by the state investment officer  
22 pursuant to the Nebraska Capital Expansion Act and the Nebraska  
23 State Funds Investment Act.

24 (4) The State Treasurer shall transfer three hundred  
25 fifty thousand dollars from the Professional Practices Commission  
26 Fund to the General Fund on September 1, 2002.

27 (5) Since nonpublic schools and their teachers do not  
1 receive the benefits of sections 79-859 to 79-871, a special  
2 certificate or permit restricted to use in nonpublic schools only  
3 shall be issued upon payment of a nonrefundable fee of thirty  
4 dollars and the applicant providing his or her social security  
5 number. Such certificate or permit shall have plainly stamped or  
6 otherwise written on its face the words nonpublic school only.  
7 Upon surrender of such a certificate or permit and the payment of  
8 the fee provided in subsection (1) of this section by the holder of  
9 the certificate or permit, a regular certificate or permit shall be  
10 issued. Such fee shall be remitted and credited as directed in  
11 subsection (3) of this section.

12 ~~(5)~~ (6) Upon payment by the applicant of a nonrefundable  
13 fee of thirty dollars, a duplicate certificate or permit to which  
14 the holder is entitled may be issued by the commissioner.

15 Sec. 8. Section 84-612, Revised Statutes Supplement,  
16 2001, as amended by Laws 2002, LB 1310, section 20, is amended to

17 read:

18 84-612. (1) There is hereby created within the state  
19 treasury a fund known as the Cash Reserve Fund which shall be under  
20 the direction of the State Treasurer. The fund shall only be used  
21 pursuant to this section.

22 (2) The State Treasurer shall transfer funds from the  
23 Cash Reserve Fund to the General Fund upon certification by the  
24 Director of Administrative Services that the current cash balance  
25 in the General Fund is inadequate to meet current obligations.  
26 Such certification shall include the dollar amount to be  
27 transferred. Any transfers made pursuant to this subsection shall  
1 be reversed upon notification by the Director of Administrative  
2 Services that sufficient funds are available.

3 (3) On July 23, 2001, the State Treasurer shall transfer  
4 three hundred seventy thousand dollars from the Cash Reserve Fund  
5 to the Municipal Natural Gas Regulation Revolving Loan Fund for  
6 purposes of loaning to Nebraska communities that seek to review  
7 natural gas rates. Any transfer made pursuant to this subsection  
8 shall be reversed upon notification by the Director of Policy  
9 Research that a sufficient court judgment has been obtained.

10 (4) Within fifteen days after July 1, 2002, the State  
11 Treasurer shall transfer twenty-two million five hundred thousand  
12 dollars from the Cash Reserve Fund to the General Fund.

13 (5) On June 16, 2003, the State Treasurer shall transfer  
14 sixty-four million nine hundred thousand dollars from the Cash  
15 Reserve Fund to the General Fund.

16 (6) On June 15, 2004, the State Treasurer shall transfer  
17 twenty-three million four hundred sixty thousand dollars from the  
18 Cash Reserve Fund to the General Fund.

19 (7) On October 15, 2004, the State Treasurer shall  
20 transfer seven million seven hundred fifty thousand dollars from  
21 the Cash Reserve Fund to the General Fund.

22 (8) On June 15, 2005, the State Treasurer shall transfer  
23 twenty-two million five hundred thousand dollars from the General  
24 Fund to the Cash Reserve Fund.

6 Sec. 11. The Department of Natural Resources Interstate  
7 Water Rights Cash Fund is created. The fund shall be used  
8 exclusively for the payment of expenses directly related to  
9 interstate water rights litigation. The fund shall contain  
10 proceeds transferred from the Nebraska Environmental Trust Fund,  
11 gifts, grants, and such other money as is appropriated or  
12 transferred by the Legislature. Any money in the fund available  
13 for investment shall be invested by the state investment officer  
14 pursuant to the Nebraska Capital Expansion Act and the Nebraska  
15 State Funds Investment Act. This fund terminates on June 30, 2003.

16 Sec. 13. Laws 2001, LB 536A, section 1, is amended to  
17 read as follows:

18 Section 1. On or before September 15, 2001, the State  
19 Treasurer shall transfer \$1,500,000 from the General Fund to the

20 Ethanol Production Incentive Cash Fund.

21 On or before September 15, 2002, the State Treasurer

22 shall transfer ~~\$1,500,000 -0-~~ from the General Fund to the Ethanol  
23 Production Incentive Cash Fund.

24 The transfers made pursuant to this section are made to  
25 aid in carrying out the provisions of Legislative Bill 536,  
26 Ninety-seventh Legislature, First Session, 2001."

27 2. On page 3, line 17, strike "and 2002-03", show as  
1 stricken, and insert ", 2002-03, 2003-04, and 2004-05".

2 3. On page 4, line 3, after the period insert "For  
3 fiscal years 2003-04 and 2004-05, the Education Innovation Fund  
4 shall be allocated in the following manner by the Excellence in  
5 Education Council: Up to twenty percent each fiscal year to the  
6 Attracting Excellence to Teaching Program Cash Fund to fund the  
7 Attracting Excellence to Teaching Program Act and, after operating  
8 expenses for the Excellence in Education Council are deducted, the  
9 remainder to the General Fund.".

10 4. On page 11, strike lines 25 through 28 and insert:

11 "(5) The State Treasurer shall transfer one million nine  
12 hundred forty-seven thousand one hundred dollars from the State  
13 Building Renewal Assessment Fund to the Nebraska Capital  
14 Construction Fund within five days after January 1, 2003.

15 (6) The State Treasurer shall transfer one million nine  
16 hundred forty-seven thousand one hundred dollars from the State  
17 Building Renewal Assessment Fund to the Nebraska Capital  
18 Construction Fund within five days after May 1, 2003.".

19 5. On page 12, strike line 1; in line 15 strike "four"  
20 and insert "two"; and strike beginning with the comma in line 18  
21 through the comma in line 19.

22 6. On page 15, line 3, strike "section" and insert  
23 "sections 79-810 and"; in line 4 after the second comma insert  
24 "section 66-1345.04, Revised Statutes Supplement, 2001, section  
25 39-2215, Reissue Revised Statutes of Nebraska, as amended by Laws  
26 2002, LB 989, section 7,"; and in line 10 after the second comma  
27 insert "section 84-612, Revised Statutes Supplement, 2001, as  
1 amended by Laws 2002, LB 1310, section 20, section 86-1405, Revised  
2 Statutes Supplement, 2001, as amended by Laws 2002, LB 1105,  
3 section 202, and Laws 2002, LB 1211, section 13," and after the  
4 last comma insert "and Laws 2001, LB 536A, section 1,".

5 7. Renumber the remaining sections accordingly.

Senator Raikes offered the following amendment to the second Standing  
Committee amendment:  
AM9067

(Amendments to Standing Committee amendments, AM9052)

1 1. On page 12, strike beginning with "Up" in line 5  
2 through "after" in line 7 and insert "After"; and in lines 8 and 9  
3 strike "the remainder".

Senator Raikes asked unanimous consent to withdraw his pending amendment, AM9067, found in this day's Journal, and replace it with his substitute amendment, AM9076, to the second Standing Committee amendment. No objections. So ordered.

AM9076

(Amendments to FA1119)

- 1 1. On page 12, strike beginning with the first "in" in
- 2 line 4 through "Fund" in line 9 and insert "to the General Fund
- 3 after operating expenses for the Excellence in Education Council
- 4 are deducted".

The Raikes amendment was adopted with 26 ayes, 6 nays, 13 present and not voting, and 4 excused and not voting.

Senators Foley and Engel asked unanimous consent to be excused until they return. No objections. So ordered.

Senator Chambers offered the following amendment to the second Standing Committee amendment:

FA1121

Amend Committee Amendments

Page 6, lines 14-16 strike the new language.

Senator Robak asked unanimous consent to be excused until she returns. No objections. So ordered.

Senator Chambers moved for a call of the house. The motion prevailed with 17 ayes, 0 nays, and 32 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 34:

Aguilar	Byars	Erdman	Maxwell	Schrock
Baker	Chambers	Hlava	McDonald	Smith
Beutler	Connealy	Hudkins	Preister	Stuhr
Bourne	Coordsen	Janssen	Price	Suttle
Brashear	Cudaback	Johnson	Raikes	Tyson
Bromm	Cunningham	Jones	Redfield	Vrtiska
Bruning	Dierks	Kremer	Schimek	

Voting in the negative, 7:

Brown	Engel	Synowiecki	Wehrbein
Burling	Hartnett	Thompson	

Present and not voting, 3:

Foley	Jensen	Kruse
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Excused and not voting, 5:

Landis                      Pedersen, Dw. Pederson, D.      Quandahl                      Robak

The Chambers amendment was adopted with 34 ayes, 7 nays, 3 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Pending.

**LEGISLATIVE BILL 37.** Title read. Considered.

Senator Bromm offered the following amendment:

AM9073

- 1 1. Strike the original section and insert the following
- 2 new sections:
- 3 "Section 1. Section 86-1405, Revised Statutes
- 4 Supplement, 2001, as amended by Laws 2002, LB 1105, section 202,
- 5 and Laws 2002, LB 1211, section 13, is amended to read:
- 6 ~~86-1405.~~ (1) The Nebraska Telecommunications Universal
- 7 Service Fund is hereby created. The fund shall provide the
- 8 assistance necessary to make universal access to telecommunications
- 9 services available to all persons in the state consistent with the
- 10 policies set forth in the Nebraska Telecommunications Universal
- 11 Service Fund Act. Only eligible telecommunications companies
- 12 designated by the commission shall be eligible to receive support
- 13 to serve high-cost areas from the fund. A telecommunications
- 14 company that receives such support shall use that support only for
- 15 the provision, maintenance, and upgrading of facilities and
- 16 services for which the support is intended. Any such support
- 17 should be explicit and sufficient to achieve the purpose of the
- 18 act.
- 19 (2) Notwithstanding the provisions of section 25 of this
- 20 act, in addition to other provisions of the act, and to the extent
- 21 not prohibited by federal law, the commission:
- 22 (a) Shall have authority and power to subject eligible
- 23 telecommunications companies to service quality, customer service,
- 24 and billing regulations. Such regulations shall apply only to the
- 1 extent of any telecommunications services or offerings made by an
- 2 eligible telecommunications company which are eligible for support
- 3 by the fund. The commission shall be reimbursed from the fund for
- 4 all costs related to drafting, implementing, and enforcing the
- 5 regulations and any other services provided on behalf of customers
- 6 pursuant to this subdivision;
- 7 (b) Shall have authority and power to issue orders
- 8 carrying out its responsibilities and to review the compliance of
- 9 any eligible telecommunications company receiving support for
- 10 continued compliance with any such orders or regulations adopted

11 pursuant to the act;

12 (c) May withhold all or a portion of the funds to be  
13 distributed from any telecommunications company failing to continue  
14 compliance with the commission's orders or regulations;

15 (d) Shall require every telecommunications company to  
16 contribute to any universal service mechanism established by the  
17 commission pursuant to state law. The commission shall require, as  
18 reasonably necessary, an annual audit of any telecommunications  
19 company to be performed by a third-party certified public  
20 accountant to insure the billing, collection, and remittance of a  
21 surcharge for universal service. The costs of any audit required  
22 pursuant to this subdivision shall be paid by the  
23 telecommunications company being audited;

24 (e) Shall require an audit of information provided by a  
25 telecommunications company to be performed by a third-party  
26 certified public accountant for purposes of calculating universal  
27 service fund payments to such telecommunications company. The  
1 costs of any audit required pursuant to this subdivision shall be  
2 paid by the telecommunications company being audited; and

3 (f) May administratively fine pursuant to section 75-156  
4 any person who violates the Nebraska Telecommunications Universal  
5 Service Fund Act.

6 (3) Any money in the fund available for investment shall  
7 be invested by the state investment officer pursuant to the  
8 Nebraska Capital Expansion Act and the Nebraska State Funds  
9 Investment Act.

10 (4)(a) The State Treasurer shall transfer funds from the  
11 Nebraska Telecommunications Universal Service Fund to the General  
12 Fund upon certification by the Director of Administrative Services  
13 that the current cash balances in the General Fund and the Cash  
14 Reserve Fund are inadequate to meet current obligations. Such  
15 certification shall include the dollar amount to be transferred  
16 which shall not exceed the amount by which the General Fund and  
17 Cash Reserve Fund are inadequate to meet current obligations. The  
18 total of such transfers shall not reduce the Nebraska  
19 Telecommunications Universal Service Fund balance below an amount  
20 sufficient to meet the obligations on the fund for the next sixty  
21 days. Any transfers made pursuant to this subsection shall be  
22 reversed upon notification by the Director of Administrative  
23 Services that sufficient funds are available or on June 30, 2007,  
24 whichever occurs first.

25 (b) Any transfer under this subsection not reversed  
26 within thirty days after the initial transfer shall accrue interest  
27 in the amount of five percent annually. Interest shall be  
1 calculated beginning on the thirty-first day after the initial  
2 transfer and continue until the transfer is completely reversed.  
3 The interest calculated shall be credited to the Nebraska  
4 Telecommunications Universal Service Fund.

5 (c) Any transfer of funds which has not been reversed as

- 6 provided in this subsection, with accrued interest, shall be  
7 considered an encumbrance against the General Fund.  
8 (d) This subsection terminates on June 30, 2007.  
9 Sec. 2. Original section 86-1405, Revised Statutes  
10 Supplement, 2001, as amended by Laws 2002, LB 1105, section 202,  
11 and Laws 2002, LB 1211, section 13, is repealed.  
12 Sec. 3. Since an emergency exists, this act takes effect  
13 when passed and approved according to law."

The Bromm amendment was adopted with 38 ayes, 1 nay, 6 present and not voting, and 4 excused and not voting.

Advanced to E & R for review with 39 ayes, 1 nay, 5 present and not voting, and 4 excused and not voting.

### **STANDING COMMITTEE REPORT** **General Affairs**

**LEGISLATIVE RESOLUTION 2CA.** Indefinitely postponed.

(Signed) Ray Janssen, Chairperson

### **AMENDMENT - Print in Journal**

Senator Thompson filed the following amendment to LB 22:  
AM9065

- 1 1. On page 2, line 4, strike "January" and insert
- 2 "October".

### **ADJOURNMENT**

At 5:23 p.m., on a motion by Speaker Bromm, the Legislature adjourned until 9:00 a.m., Friday, August 9, 2002.

Patrick J. O'Donnell  
Clerk of the Legislature